

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs October 24, 2007

STATE OF TENNESSEE v. LAMANNUEL DEQUAN STOCKARD

**Direct Appeal from the Criminal Court for Davidson County
No. 2004-A-308 Cheryl Blackburn, Judge**

No. M2007-00456-CCA-R3-CD - Filed November 5, 2007

The defendant, Lamannuel Dequan Stockard, appeals from the judgment of the Davidson County Criminal Court revoking his probation and imposing service of the remainder of his sentence for voluntary manslaughter in confinement. In this appeal, the defendant argues that the trial court erred in revoking his probation. Following our review of the record, parties' briefs, and the applicable law, we determine no error exists in the court's revocation of probation, and thus affirm the court's judgment.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Criminal Court Affirmed

J.C. McLIN, J., delivered the opinion of the court, in which JOSEPH M. TIPTON, P.J., and ROBERT W. WEDEMEYER, J., joined.

Nathan Moore, Nashville, Tennessee, for the defendant, Lamannuel Dequan Stockard.

Robert E. Cooper, Jr., Attorney General and Reporter; David H. Findley, Assistant Attorney General; Victor S. Johnson, III, District Attorney General; and Bret Gunn, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

BACKGROUND

The record reflects that the defendant was originally charged with first degree murder and was convicted of voluntary manslaughter after a jury trial. The defendant was sentenced to six years.¹ He tested positive for marijuana at the sentencing hearing. The defendant was given the opportunity to have his sentence suspended if he completed the Lifelines program while incarcerated.

¹ Although the appellate record does not clarify where the defendant was confined during his sentence, the record does contain a reference to CCA Nashville. We believe this location refers to the CCA Metro Nashville Detention Center in Davidson County.

He successfully completed the program and was released on probation. Shortly thereafter, the defendant was re-arrested for possession of marijuana, cocaine, and drug scales. He pled guilty to simple drug possession and was sentenced to eleven months and twenty-nine days in jail. A probation revocation warrant was issued based on the suspended sentence for voluntary manslaughter.

At the probation revocation hearing, the defendant testified that he had marijuana, cocaine and drug scales in his possession when he was arrested. He conceded that he violated probation on two separate grounds, namely, drug possession and the accrual of new charges. He confessed that he was now addicted to crack cocaine in addition to marijuana. He also admitted that he previously tested positive for marijuana at the sentencing hearing for his voluntary manslaughter conviction. However, the defendant maintained that he was only trying to sell the drug scales, not use them to weigh drugs.

The defendant further testified that he was otherwise compliant with the terms of his probation. He was living with his grandmother as ordered and had completed the Lifelines program. The defendant appealed to the court for another chance, claiming that he would develop new friends and associates, participate in intensive drug treatment and continue to reside with his grandmother.

At the conclusion of the hearing, the trial court revoked the defendant's probationary sentence and imposed incarceration. The court commented upon the seriousness of the offense leading to the defendant's conviction for voluntary manslaughter and also stated, "I gave you a chance. Six months later not only do you have the same addiction but you pick up this other one. I am going to put this sentence into effect."

ANALYSIS

On appeal, the defendant challenges the revocation of his probation. Although he concedes that he is guilty of violating his probation, he appeals the imposition of confinement on the basis that he would benefit most from drug treatment and not incarceration.

The decision to revoke probation lies within the sound discretion of the trial court. *State v. Leach*, 914 S.W.2d 104, 106 (Tenn. Crim. App. 1995). The trial court may revoke probation upon a finding by a preponderance of the evidence that the defendant violated the conditions of his or her probation. *See* Tenn. Code Ann. §§ 40-35-310, - 311(e)(2006); *State v. Harkins*, 811 S.W.2d 79, 82 (Tenn. 1991). If the trial court finds that the defendant has violated probation, the court may revoke probation and either order incarceration, order the probationary period to begin anew, or extend the remaining probationary period for up to two additional years. *State v. Hunter*, 1 S.W.3d 643, 647 (Tenn. 1999); *see also* Tenn. Code Ann. §§40-35-308, -310, -311 (2006). When probation is revoked, then the original judgment "shall be in full force and effect from the date of the revocation of such suspension . . ." Tenn. Code Ann. §40-35-310.

The decision of the trial court to revoke probation will be upheld on appeal unless there has been an abuse of discretion. *Harkins*, 811 S.W.2d at 82. If the trial court has exercised “conscientious judgment in making the decision rather than acting arbitrarily,” then there is no abuse of discretion. *Leach*, 914 S.W.2d at 107. Discretion is abused only if the record contains no substantial evidence to support the trial court’s conclusion that a violation has occurred. *Harkins*, 811 S.W.2d at 82; *State v. Gregory*, 946 S.W.2d 829, 832 (Tenn. Crim. App. 1997).

We determine that there was no abuse of discretion by the trial court. In the instant case, it is undisputed that the defendant was originally convicted of voluntary manslaughter and tested positive for marijuana at the sentencing hearing for that conviction. The trial court suspended the defendant’s sentence conditioned upon his completion of the Lifelines program. Although the defendant completed the program, he admitted to continued use of marijuana and, additionally, admitted to the court that he had developed a second addiction to crack cocaine. The defendant subsequently pled guilty to simple drug possession of cocaine, a clear violation of the terms of his probation. The defendant was given more than one opportunity to reform his behavior and failed to do so. Accordingly, the trial court did not abuse its discretion by revoking the defendant’s probation. The judgment of the trial court should be affirmed.

CONCLUSION

Based upon the foregoing authorities and reasoning, we affirm the judgment of the trial court.

J.C. McLIN, JUDGE